

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT P. SMITH III, D-00615,)	
)	
Plaintiff,)	No. C 10-4562 CRB (PR)
)	
vs.)	ORDER GRANTING MOTION
)	TO DISMISS WITH PARTIAL
STATE OF CALIFORNIA, et al.,)	LEAVE TO AMEND
)	
Defendants.)	(Docket #11, 15, 17, 21 & 22)
_____)	

I.

On August 13, 2010, plaintiff Robert P. Smith III, a state prisoner at Salinas Valley State Prison (SVSP), filed a pro se complaint in Monterey County Superior Court alleging various violations of his federal and state rights while at California State Prison, Corcoran (CSP-COR) and while at SVSP. Specifically, plaintiff claims inadequate medical care, retaliation and inadequate dental care by several defendants at CSP-COR and at SVSP.

On October 8, 2010, defendants California Department of Corrections and Rehabilitation (CDCR); E. Clark, MD; J. Gonnella; D. Howen, DDS; C. Kates; J. Moon, MD; J. Obaiza; G. Searcy; J. Squires; K. Wall and J. Wang, MD (defendants) removed plaintiff's action to this court pursuant to 28 U.S.C. § 1441(b). It was designated as a prisoner civil rights action and assigned to Judge Wilken. On April 27, 2011, the action was reassigned to the undersigned.

1 on federal question, not diversity, jurisdiction. The issue in this case remains
2 whether, under the federal joinder rules, plaintiff can join all of his claims and
3 defendants in one suit.

4 A.

5 Plaintiff alleges that several defendants at CSP-COR and at SVSP failed to
6 provide him adequate medical care. In support, plaintiff references three
7 administrative appeals (602s) in which he complained of inadequate medical care
8 for various health problems. Two of the 602s were filed while plaintiff was at
9 CSP-COR and one of the 602s was filed while plaintiff was at SVSP.

10 Plaintiff's claims of inadequate medical care at CSP-COR and of
11 inadequate medical care at SVSP do not satisfy Rule 20(a)(2)'s requirements.
12 Plaintiff has not shown that all the named CSP-COR and SVSP defendants
13 participated in the same transaction, occurrence, or series of transactions or
14 occurrences, and that a question of law or fact is common to all defendants. See
15 George v. Smith, 507 F.3d 605, 606-07 (7th Cir. 2007). Mere similarity in the
16 types of problems plaintiff encountered at two different prisons is not enough to
17 satisfy Rule 20(a)(2) and bring in one suit otherwise unrelated claims against
18 different defendants. See Coughlin, 130 F.3d at 1350-51.¹ This is so not only to
19 prevent the sort of morass that a multiple-claim, multiple-defendant suit seeks
20 "but also to ensure that prisoners pay the required filing fees – for the Prisoner
21 Litigation Reform Act limits to 3 the number of frivolous suits or appeals that
22 any prisoner may file without prepayment of the required fees." George, 507
23 F.3d at 607 (citing 28 U.S.C. § 1915(g)).

24
25 ¹Nor is plaintiff's apparent naming of the State of California and CDCR in
26 connection with all claims enough to satisfy Rule 18(a) because neither the State
27 of California nor CDCR is a viable defendant insofar as his claims for damages
28 are concerned.

1 fact with the surviving claim. See id. at 1350-51.


2 III.

3 For the foregoing reasons, defendants' motion to dismiss (docket # 11) is
4 GRANTED. The dismissal is with a partial leave to amend, as indicated above,
5 within 30 days of this order. The pleading must be simple and concise and must
6 include the caption and civil case number used in this order and the words FIRST
7 AMENDED COMPLAINT on the first page. Failure to file a proper amended
8 complaint within the designated time will result in the dismissal of this action.

9 Plaintiff's pending miscellaneous motions (docket # 15, 17, 21 & 22) are
10 denied as moot and/or for lack of merit.

11 SO ORDERED.

12 DATED: March 2, 2012

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15 CHARLES R. BREYER
16 United States District Judge
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